



The “forgotten constituency”: Making a case for digital rights for prisoners in Zimbabwe during and beyond COVID-19

AUTHOR: David Makwerere | COUNTRY: Zimbabwe

INTRODUCTION

The evolution of digital communications technology has changed our societies, many of our institutions and the way we live in profound ways. Internet access is now viewed as a basic requirement for many in society. Information on health, education, science, sports, etc. is now easily accessible on the internet. In some developed countries, public administration and bureaucratic communication have gone paperless. This evolution has also ushered in a growing discourse on digital (human) rights. These digital and technological advancements bring with them issues and dilemmas when engaging with certain constituencies in society, however. One such constituency is the prison constituency. In Zimbabwe, just like in many other parts of the world, prison is highly resented by society. Even the government and the ministry in charge of prisons do not seem comfortable to discuss the rights of prisoners, let alone digital rights.

This paper tackles this largely unexplored (at least in the Zimbabwean context) subject on digital rights for prisoners. The COVID-19 pandemic saw the proclamation of a decision by the government of Zimbabwe to limit visits to public spaces like hospitals, banks, colleges and prisons. For prisoners, it means very limited interaction, if any, with the rest of the world. Against this backdrop, this paper engages with the question of digital rights for prisoners and how these can play a part in keeping the prisoners connected to the rest of the world, while also arming them with necessary social, technological and economic skills for post-prison life. The reflections in the paper are based on the African Declaration on Internet Rights and Freedoms,¹ with particular attention was given to Principles 1 (Openness), 2 (Internet Access and Affordability),

¹ <https://africaninternetrights.org>

3 (Freedom of Expression), 4 (Right to Information), and 7 (Right to Development and Access to Knowledge).

BACKGROUND

Most studies on prisoners have focused mainly on their rights in general but are silent on digital rights and their importance.² Digital rights for prisoners remain largely unexplored as a discourse. Although there are a few studies that have explored the importance of digital rights for prisoners in the global North, the field remains embryonic.³

The Human Rights Forum reported in 2012 that the rights of prisoners in Zimbabwe are heavily compromised owing to several factors, among them overcrowding, lack of financial and material resources and general neglect.⁴ On 27 March 2020, Zimbabwean President Emmerson Dambudzo Mnangagwa issued a presidential amnesty to qualifying prisoners. The reason for the early release of these prisoners was to decongest the prisons in light of the COVID-19 pandemic that has ravaged the world since the beginning of the year. Further restrictions were also made. One such significant pronouncement was the restriction of visits to prisons. What this effectively implies is that prisoners have been further alienated from the rest of the world.

According to the World Prison Brief, Zimbabwe had a prison population of about 22,000 inmates as of March 2020, as well as an overcrowded occupancy rate of 129.4%.⁵ The decision to release some prisoners was thus intended to decongest the prisons. While this is commendable, questions should be asked about the welfare of the prisoners who could not qualify for the amnesty. What happens to their basic rights? Such rights as the right to information? Right to education? Right to entertainment? Could these be bridged through digital technologies, and to what extent? What type of digital rights do they have, and to what extent should they enjoy these? What is the role of the state in ensuring digital rights for prisoners? What efforts have been made to provide for the enjoyment of these rights? This paper discusses these questions to remind all relevant stakeholders of the need to uphold the digital rights of prisoners in these trying times and even beyond.

-
- 2 Samanyanga, I. (2005). *A study to investigate the factors contributing to the increased rate of recidivism at Whawha Medium Prison*. Zimbabwe Open University; Human Rights Forum. (2012). *Human Rights Bulletin: March 2012*. <http://www.hrforumzim.org/wp-content/uploads/2012/03/Bulletine-71-English.pdf>; Human Rights Forum. (2018). *Rights Behind Bars: A Study of Prison Conditions In Zimbabwe*. <http://www.hrforumzim.org/wp-content/uploads/2018/10/Prison-Report-2018.pdf>; Rupande, G., & Ndoro, I. (2014). Challenges faced by the Zimbabwe Prison Service in implementing Prison Rehabilitation Programs. A Case of Marondera Prison. *International Journal of Innovative Research and Development*, 3(13).
- 3 Maass, D. (2015, 28 December). *Defending Prisoner Rights in the Digital World: 2015 in Review*. *Electronic Frontier Foundation*. <https://www.eff.org/deeplinks/2015/12/defending-prisoner-rights-digital-world-2015-review>; Mackey, A., & Maass, D. (2016, 20 January). *The Federal Communications Commission Should Ensure Digital Rights for Prisoners and Their Families*. *Electronic Frontier Foundation*. <https://www.eff.org/deeplinks/2016/01/fcc-should-ensure-digital-rights-prisoners-and-their-families>
- 4 Human Rights Forum. (2012). Op. cit.
- 5 <https://www.prisonstudies.org/country/zimbabwe>

THE PROBLEM

Although human rights law is clear about the rights of prisoners,⁶ there is no consensus regarding the extent to which prisoners should enjoy digital rights. The debate has been raging for years.⁷ While significant headway has been made in the global North, the same cannot be said of countries in the global South. Nevertheless, it is an agreed fact that prisoners should, for the most part, enjoy human rights as much as any person in the world. The digital revolution also means that prisoners should be considered for digital rights and facilities. What can be debated, though, is the extent to which these can be enjoyed. The primary aim of this paper is to argue for some basic digital rights for prisoners. Such basic digital rights will enable prisoners to communicate, get information about the global COVID-19 pandemic and stay in touch with their families.

HUMAN RIGHTS REGIME FOR PRISONERS

Prisoners are meant to enjoy the generality of human rights, except for those rights, like freedom of movement, which are curtailed as a consequence of imprisonment. In 1990, the Office of the United Nations High Commissioner for Human Rights (OHCHR) provided some basic provisions for the treatment of prisoners. The emphasis is on ensuring the dignity of prisoners while also allowing them the exercise of most of the basic human rights.⁸ At the continental level, the Kampala Declaration on Prison Conditions in Africa of 1996⁹ is one of several important instruments aimed at ensuring decent conditions for prisoners across the continent. The declaration was passed against the backdrop of serious concern around overcrowding in African prisons.

Another key observation was that rights should be considered in the context of economic development, social and cultural values and social change. Emphasis should be placed on providing education, skills-based training and a work programme that is in the interests of the rehabilitation of the offender while incorporating elements of self-sufficiency and sustainability. The Kampala Declaration also emphasised the importance of protecting the human rights of prisoners at all times. Of interest to this paper are recommendations (d), (e) and (i) of the Kampala Declaration, which state:

(d) Urgent and concrete measures should be adopted that improve conditions for vulnerable groups in prisons and other places of detention; such

6 OHCHR. (1990). *Basic Principles for the Treatment of Prisoners*. <https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx>;

OHCHR. (2005). *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials*. <https://www.un.org/ruleoflaw/blog/document/human-rights-and-prisons-pocketbook-of-international-human-rights-standards-for-prison-officials>

7 Sawari, A. (2018, 29 August). Do prisoners have rights? *SawariMedia*. <https://sawarimi.org/archives/2393>

8 OHCHR. (1990). Op. cit.

9 <https://cdn.penalreform.org/wp-content/uploads/2013/06/rep-1996-kampala-declaration-en.pdf>

as juveniles, women, mothers and babies, the elderly, terminally ill and very sick, the mentally ill, the disabled, foreign nationals. Procedures that take into account their special needs and adequate treatment during their arrest, trial and detention, must be applied to these groups.

(e) Many prisoners require only minimal levels of security and should be accommodated in open institutions. Wherever possible, prisoners should be encouraged to involve themselves in educational and productive activities with the support of staff.

(i) Channels of communication should be set up with the Special Rapporteur (SR) on Prisons and Conditions of Detention in Africa so that the SR can be assisted and supported in his important task.

The Kampala Declaration was later followed up by the 2002 Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa.¹⁰ The central theme of the Ouagadougou Declaration also resonated around making prisons more humane and platforms for personal development for inmates. In Zimbabwe, the Zimbabwe Prisons and Correctional Services (ZPCS) generally abides by the global and continental benchmarks, at least on paper. The Zimbabwe Prisons Act (Chapter 7:11) sets the rights of prisoners in line with international best standards and practices. On paper, the provisions are just as good as anywhere in the world, but in practice, life in Zimbabwean prisons is unbearable to many.

DIGITAL RIGHTS FOR PRISONERS IN ZIMBABWE?

The major problem with the laws and statutes on the treatment of prisoners is that the instruments are generally silent on digital rights for prisoners in Zimbabwe. The World Economic Forum has defined digital rights simply as human rights in the internet era.¹¹ Nitsche and Hairsine provided a more elaborate definition of digital rights when they stated, "Digital rights are considered to be the same fundamental human rights that exist in the offline world – but in the online world."¹² In a resolution on "The promotion, protection and enjoyment of human rights on the Internet", the United Nations Human Rights Council first declared in 2012 and reaffirmed in 2014, 2016 and 2018 that "the same rights that people have offline must also be protected online."¹³ From the above definitions, it is clear that digital rights do not imply a reinvention of the meaning

10 <https://www.achpr.org/legalinstruments/detail?id=42>

11 Hutt, R. (2015, 13 November). What are your digital rights? *World Economic Forum*. <https://www.weforum.org/agenda/2015/11/what-are-your-digital-rights-explainer/>

12 Nitsche, L., & Hairsine, K. (2016, 9 December). What are digital rights? *DW Akademie*. <https://www.dw.com/en/what-are-digital-rights/a-36703292>

13 The 2018 resolution is available here: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/L.10/Rev.1

of human rights. It simply means enjoyment of the same rights via a variety of digital platforms. Considering that Zimbabwe is still a long way from realising availability of internet connectivity in its public spaces,¹⁴ this paper adopts a working definition of digital rights that embraces the enjoyment of online rights by all members of society including those serving prison time.

What is, however, clear is that very little has been done to ensure that prisoners enjoy at least some basic digital rights. In years gone by, most prisons offered Zimbabwe Broadcasting Corporation Television (ZBC-TV) to their inmates. However, a combination of poor corporate governance practices within most government departments in Zimbabwe and a comatose economy has seen the television sets disappearing from the prison halls. This means that the only basic medium for the enjoyment of digital rights for prisoners has now been taken away. The idea of advanced technologies at this moment in time remains wishful thinking.

MAKING A CASE FOR DIGITAL RIGHTS FOR PRISONERS IN ZIMBABWE

The conditions in prisons across Zimbabwe are appalling, to say the least. They are overcrowded, filthy and poorly maintained.¹⁵ The picture below provides a glimpse of what the internal conditions of a prison look like in Zimbabwe.

Conversations that were carried out in confidence with prison officials in Zimbabwe revealed that there are hardly any digital rights for prisoners in Zimbabwe. It was revealed that most of the facilities are run down and to think of digital rights when securing food for the prisoners is a nightmare is tantamount to daydreaming. First and foremost, prisoners are citizens and must be regarded as such at all times. Just like those citizens who are not serving prison time, they deserve to be kept informed on matters of common concern. The global COVID-19 pandemic is a matter of common concern to all citizens, including prisoners, and in such difficult times, digital platforms can go a long way in keeping the citizenry informed and thus reducing levels of anxiety. As Jewkes and Johnston argue, denying prisoners internet access could be seen “as an example of technology being used as a strategy of social exclusion.”¹⁶

From a COVID-19 perspective, digital rights can contribute significantly to creating consciousness among the inmates. Inmates getting an opportunity to learn, first hand, from promotional materials from the Ministry of Health, Ministry of Information and the World Health Organization will surely go a long way in educating them about the best practices when dealing with the highly contagious disease. At least those who benefitted from amnesty will

14 Freedom House. (2019). *Zimbabwe: Freedom on the Net 2019*. <https://freedomhouse.org/country/zimbabwe/freedom-net/2019>

15 Alexander, J. (2009). Death and Disease in Zimbabwe's Prisons. *The Lancet*, 373, 995-996; Home Office. (2017). *Country Policy and Information Note. Zimbabwe: Prison Conditions, Version 2.0*. <https://www.refworld.org/pdfid/589d76684.pdf>

16 Jewkes, Y., & Johnston, H. (2009). Cavemen in an Era of Speed-of-Light Technology: Historical and Contemporary Perspectives on Communication within Prisons. *The Howard Journal of Criminal Justice*, 48(2), 132-143.



find information more readily available in the communities that they are being released into.

↑ Source: Jekesai Njikizana/AFP

The situation is different for those remaining in prisons because they only look up to the prison officials (in most cases junior officers) who hardly have some training on communicating the characteristics of the disease. Although there are dedicated full-time health officers, they are likely to find it overwhelming to discuss the subject with all inmates and regularly. Denying prisoners their digital rights is certainly counter-productive because of the ravaging effects of COVID-19. The government and other stakeholders such as faith-based organisations and civil society should provide basics for the prisoners to allow them some standard of decency. The case for digital rights for prisoners is even more pertinent considering that on 1 June 2020, the ZPCS announced that novel coronavirus infections had been confirmed at two of its facilities, Plumtree and Beitbridge Prisons.

A key argument put forward by proponents of digital rights for prisoners is that the world has gone fully digital. A considerable degree of access to digital rights, especially the right to information, will go a long way in keeping the prisoners abreast with global trends so that when they are eventually released, they will find it easier to reintegrate into society because they already have an appreciation of what is happening in the world around them. Rehabilitation specialists in the ZPCS conceded that they have not considered the potential of digital rights in facilitating effective rehabilitation. The writer also acknowledges that there is a need for an empirical study to establish the benefits of digital rights in the rehabilitation of prisoners. However, the case for mainstreaming digital rights in prison is one that resonates with global trends.

Beyond the COVID-19 pandemic, digital rights for prisoners can play an important role in addressing the needs of the inmates. For example, if inmates are seeking to continue with their education, whether academic or professional, access to digital rights will ensure that their desires to improve their qualifications

are well catered for. Digital education in prisons could be a much more efficient, safe and cheap way of providing for the needs of the prisoners. This will also ultimately save a lot of taxpayers' money. In a world increasingly defined by technology, denying internet access makes it harder for inmates to prepare for life on the outside.

The current emphasis in Zimbabwean prisons appears to be on vocational skills for inmates. While this is commendable, as many of the prisoners get an opportunity to acquire technical and vocational skills necessary for their post-prison survival, this might not be enough. The world has gone digital, and allowing prisoners to enjoy their digital rights is a sure way of enabling their post-prison life adaptation and survival skills. Being internet savvy is rapidly becoming an essential survival skill. Samanyanga lamented that the rate of recidivism in Zimbabwe is very high,¹⁷ although official figures are difficult to maintain.¹⁸ While there is no evidence to show that digital rights can contribute to a reduction of recidivism, it is worth the while to begin to prioritise the provision of these rights for the prisoners.

Prisons must also ensure that inmates have at least some telephone access to their next of kin in these difficult times. This will lessen the anxiety levels among prisoners, since prison visits have been curtailed as part of the measures to keep COVID-19 away from the country's prisons. The enjoyment of digital rights will ensure that families are kept in touch with their loved ones who are serving prison time.

YET ANOTHER EMERGING CONCERN: CHILDREN ACCOMPANYING THEIR MOTHERS IN PRISON

Apart from the inmates, there are children who are accompanying their mothers in Zimbabwean prisons. These children are not offenders but rather victims of circumstances. According to Langa, "Children accompanying their incarcerated mothers in the country's prisons are reportedly suffering more than the offenders because of the harsh prison conditions in the archaic buildings that were constructed for male offenders only."¹⁹ These children are not prisoners, and legally, they are not covered by international, continental, regional and national statutes for the treatment of prisoners. Nevertheless, they still need proper care and attention. They need to be nurtured properly and to enjoy their rights, particularly the right to education, entertainment and proper care.

The United Nations Convention on the Rights of the Child (1989) outlined civil, political, social, economic and cultural rights for children. Mtetwa found that the rights of children accompanying their mothers in Zimbabwean prisons

17 Samanyanga, I. (2005). Op. cit.

18 Rupande, G., & Ndoro, I. (2014). Op. cit.

19 Langa, V. (2018, 12 November). 'Children suffering more than incarcerated mothers'. *Newsday*. <https://www.newsday.co.zw/2018/11/children-suffering-more-than-incarcerated-mothers>

are wilfully violated.²⁰ The situation is made worse by the fact that the children are not catered for on the food rations for their mothers. There are no proper childcare facilities for the children and their educational needs are not addressed.

Part of the efforts to create child-friendly facilities in prisons will be through advancing digital rights for these children, because their being in prison makes them a part of the “forgotten constituency” that requires attention. Their digital rights are being violated, particularly rights to entertainment and education. Provision of online learning and entertainment for these children will go a long way in ensuring rights for the children accompanying their mothers in prison.

↓ Source: Citizen journalist



CONCLUSION AND RECOMMENDATIONS

In a nutshell, this article argues that it is high time that national governments on the African continent seriously think of ways of respecting the digital rights of prison inmates. The COVID-19 pandemic has been a great cause of anxiety and uncertainty among people across the globe and prisoners are not immune to this. Denial of digital rights is tantamount to the social exclusion of the prisoners. Providing for digital rights will ensure that prisoners are kept informed of global developments. After all, the Kampala Declaration on Prison Rights and the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa call for stakeholders to ensure that prisons are safe spaces for the rehabilitation of offenders. The paper, therefore, recommends that:

²⁰ Mtetwa, P. (2018). *The Forgotten Victims in Zimbabwe's Prisons: Challenges Faced by the Children Accompanying Their Incarcerated Mothers*. Parliament of Zimbabwe.

- Zimbabwe Prisons and Correctional Services ensure the provision of basic digital rights to prisoners so that they can at least communicate with their families.
- To reduce stress and anxiety levels, ZPCS should at least ensure some basic digital entertainment for prisoners during and after the COVID-19 lockdown. This is a necessary consideration to manage the psycho-social effects of confinement among prisoners.
- Prisons should consider mainstreaming digital rights into rehabilitation programmes to effectively prepare prisoners for life after prison. This is a long-term consideration that goes beyond the current COVID-19 context.
- Global, continental, regional and national authorities should consider ways of strengthening the provisions of the African Declaration on Internet Rights and Freedoms to guarantee the rights of prisoners.
- There is a need to ensure that the rights of children accompanying their mothers in prison are met. They might be few in number, but still, their presence warrants a committed effort on the part of the responsible authorities to provide for their rights.